STATE REPRESENTATIVE
GARY HEBL
46TH ASSEMBLY DISTRICT

MEMO

TO: Members of the Assembly Committee on Judiciary and Ethics
FROM: Representative Gary Hebl
RE: Assembly Bill 524, relating to raising the jurisdictional limits of small claims court
DATE: December 1, 2009

The bill in front of the committee today, Assembly Bill 524, is an entirely new approach to small claims court that is designed to balance the needs of three competing groups of stakeholders; the small business community, county governments, and consumer advocates. The bill creates a 2-tiered system of jurisdictional limits and fees that gives the small business community, and other infrequent users of small claims court, increased access to small claims court while avoiding overburdening counties and consumers with a huge influx of cases filed by frequent users of small claims court.

The Status Quo: The problem with small claims court

- The jurisdictional limit in small claims court has not been raised since 1995, creating an outcry from the small business community. The value of the jurisdictional limit has been so eroded by inflation that small business people are unable to use small claims court in the manner it is intended to be used, namely, as a court lay people can use to represent themselves in order to resolve monetary disputes.

- Small claims court is overrun by large institutional users, such as credit card and utility companies, who file literally thousands of cases each year. This creates an enormous monetary burden for the counties, who must pay for and administer small claims court. This also alarms consumer advocates because the large institutional users are represented by professional attorneys while the consumers they sue represent themselves, creating an uneven playing field that harms consumers.

- Raising the jurisdictional limit for all users pits the interests of the small business community against the interests of county governments and consumer advocates. County governments have no additional resources on hand to adjudicate the increased caseload that corresponds with an increased limit and consumer advocates worry that an increased limit for institutional users will further exacerbate the uneven playing field that already exists. These competing, and hitherto unresolved, interests have led to a policy stalemate where none of these stakeholders' concerns are addressed.

The Solution: 2 Tiers of limits and fees based on use of small claims court

- The bill before us today addresses the concerns of small business people, the counties and consumer advocates. The bill creates a two-tiered system in small claims court.

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- Tier 1 is designed for small business people and others who use small claims court only occasionally. The limit in this tier is $10,000 and the filing fee is $33. This fee represents a 50% increase in filing fees designed to compensate the counties for the increased caseload that will go along with the increased ability of occasional users to use small claims court. The bill defines Tier 1 users as people who file 20 or fewer small claims cases in a year.

- Tier 2 is designed for credit card companies, utility companies and other frequent users, such as large property management firms who use small claims court on a nearly constant basis. The limit in Tier 2 is maintained at $5,000 and the filing fee is $44. This fee represents a 100% increase and is designed to act as a user fee system so that constant users pay their fair share for the county resources they use. The bill defines Tier 2 users as people who file 21 or more small claims cases in a year.

- Additionally, the bill contains a self-enforcement mechanism in which the number of cases filed in a year is declared on a signed affidavit from the plaintiff. The case is dismissed with prejudice, and cannot be brought to court again, if the number of cases declared on the affidavit is not factual.

STATE REPRESENTATIVE
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46TH ASSEMBLY DISTRICT

By the Numbers

How AB 524 increases funding for small claims court locally

- According to an analysis by the Legislative Fiscal Bureau, approximately 75.3% of small claims court filers qualify as Tier 2 users. This represents the proportion of filers who file more than 20 small claims per year.

- Under the bill, Tier 2 users pay a $44 filing fee, an increase of $22. The bill specifies that counties retain the $22 increase for their purposes.

- Also under the bill, Tier 1 users (those who file 20 or fewer claims per year) pay a $33 filing fee, an increase of $11. The bill also specifies that counties retain the $11 increase for these users for county purposes.

- Below you will find a fiscal estimate of the local impact of AB 524 on selected counties based on the 75.3% figure given by the Fiscal Bureau.

County	2007 # of Cases	# of Tier 2 Cases	Increase in Revenue from Tier 2 Users	# of Tier 1 Cases	Increase in Revenue from Tier 1 Users	Total Increase
Milwaukee	48,224	36,313	$798,879	11,911	$131,025	$929,903
Dane	15,114	11,381	$250,379	3,733	$41,065	$291,443
Waukesha	7,315	5,508	$121,180	1,807	$19,875	$141,055
Racine	7,175	5,403	$118,861	1,772	$19,494	$138,356
Kenosha	5,366	4,041	$88,893	1,325	$14,579	$103,473

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41ST ASSEMBLY DISTRICT

AB 524: Small Claims Jurisdictional Limit
Testimony by State Representative Joan Ballweg
Before the Assembly Committee on
Judiciary and Ethics
December 1, 2009

Thank you Chairman Hebl and members of the Assembly Judiciary and Ethics Committee for hearing Assembly Bill 524, a bill to raise the jurisdictional limit in a small claims action to $10,000.

As a private citizen and small business owner I support this proposal as a cost effective tool to bring affected parties before an objective arbitrator to solve financial disputes. This can be individual to individual, business to business, business to customer, or even renter to landlord. So this change would be a benefit to small business owners, and private individuals alike.

The benefit of the Small Claims process is that of cost effectiveness. It is more expensive to file a civil claim in circuit court, and requires the assistance of an attorney in order to file. It is not the court fee that is prohibitive; it is the necessity for legal representation and the percentage of the award that an attorney would take in payment for settling a case.

The benefit of this bill is that it would allow greater access to the system by allowing a larger claim. I see the current $5,000 ceiling as just too low.

In 1993, the limit increased from $2,000 to $4,000, and then the following session, a provision included in the budget increased the limit to $5,000. The statutory provision has remained unchanged for the past fourteen years, so inflation alone should warrant an increase in the jurisdictional limit.

***According to the inflation calculator, provided by the U.S. Department of Labor, Bureau of Labor Statistics, $5,000 in 1994 is equivalent to $7,293.42 in 2009.

As a small business owner I have taken, on average, five to ten cases a year to Small Claims. My business opened 33 years ago today, which means I have taken around 150 to 300 cases to court, in Green Lake and Dodge Counties.

There have been times when I have had balances owed that ran over the cap, and I had three options in filing a case:

- One, hire an attorney and file in Circuit Court.
- Two, file at the limit and forego the balance above the cap.
- Three, split up the debtor's balance, if possible and file two Small Claims cases.

I have done all of the above, depending on the circumstances.

For example a small business owner is owed $7,000 by a client that has not satisfied his debt. The expense of filing a large civil case and hiring an attorney makes it cost prohibitive to pursue the matter in circuit court. Recovering $5,000 for a small business owner is better than having to write off the full $7,000 in accounts receivable or receive less than $5,000 after paying attorney fees which are usually done on a percentage or time and material basis. The answer is to file in small claims, so the loss and costs are limited. Justice is not being served because the creditor is not made whole by the remedy.

The other case in which a debt could be divided into two cases means double the filing fees, and then both cases have to be handled by the creditor, debtor and the court.

Receiving a judgment in a Small Claims case does not guarantee the plaintiff will recover any money. Although, it is true that the filing, of these cases, brings the two parties together, starts them talking and in most instances, helps them reach some agreement on the bill and terms that result in payment of the debt without further enforcement action.

Small Claims Court is a reasonable, cost effective, and fair way for small businesses to deal with past due accounts, private individuals to have some power over business, and for individuals to settle small disputes. Statewide statistics show 50% of small claims cases are either closed before the initial court date or, are settled after an initial appearance. Milwaukee County statistics show that over 75% of cases are settled short of trials.

I suggest that it is only right to allow greater access to "The People's Court", for both businesses and individuals.

While I support raising the limit to $10,000, which this bill would accomplish for a limited number of cases, I believe a few minor changes could improve this legislation. First, rather than consider the number of cases filed on a rolling 365 days timetable, I would modify that provision to have it apply to the calendar year. From a record keeping standpoint, this change would make it easier to keep track of how many cases had been filed over $5,000. The second change I would suggest is to have the higher limit of $10,000 apply to any 20 cases filed in that calendar year, not just the first 20 cases.

I ask you to support AB 524 and consider these modifications. Thanks you for your time and attention.

WIA

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MEMORANDUM

To: Assembly Committee on Judiciary

From: Andrew J. Franken

Date: December 1, 2009

Subject: AB 524 – Increased Limits on Small Claims Jurisdiction

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On behalf of our member companies, we respectfully request that the captioned be modified to exclude from the increase third party, personal injury, and tort claims. Our reasons for this modification are as follows:

- By definition, small claims court is a venue for a quick and efficient claims resolution.
- The proponents of this bill seek to expand small claims jurisdiction to obtain such efficiency in claims resolution primarily where contracts have not been entered into and a debt is owing.
- Tort claims are complex regardless of the amount in controversy, including, but not limited to, determinations of duty, breach of duty, proximate cause and damages. By definition such claims require not only the resolution of these complex issues but many times a formal discovery process to fully investigate underlying facts. To reach decisions in all of these areas, there are necessary procedural protections arising in circuit court, which are sacrificed in small claims court in the name of "affordable and informal access to justice."
- Raising the threshold will bring many more complex tort claims into small claims court where a full benefit of the procedural safeguards necessary to investigate and resolve tort claims are not fully available.
- There has been no hue and cry from the supporters of this bill to expand small claims court to these types of claims…in fact they acknowledge that this bill should not apply to tort claims.
- The general informality of the small claims process and the inapplicability in the rules of evidence makes the resolution of tort claims much more difficult, and sets the stage for full appeal to the circuit court, requiring additional expense and time in the claims resolution process.
- In many instances small claims matters are resolved without notice to the appropriate insurer for the tort claim causing significant problems when the insurer is "expected" to pay the claim, but was not part of the small claims action.

For the reasons stated above, we request the exemption stated.

Wisconsin Independent Businesses, Inc.
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TO : Assembly Committee on Judiciary and Ethics
FROM : Wisconsin Independent Businesses
DATE : December 1, 2009
RE : AB-524

In this time of tight budgets and tough economic crisis Wisconsin Independent Businesses is encouraging this committee and legislators to consider and pass an increase in the small claims court limit to $10,000.

The limit has not been raised since 1994 and with increased costs, prices and the tough economy it is no longer feasible to consider $5,000 as the limit. WIB also understands in this time of tight budgets that being "revenue" neutral or better is necessary. That is why we also advocate raising the filing fees for small claims on a two-tiered system. We also support that the total amount of increased fees be kept by the counties. It is their expenses that will increase and this will fund those expenses at no cost to the state.

Another worry has been that there would be a large increase in the small claims caseload. After 1994 in Wisconsin, the last time the limit was raised, we saw an 11% increase in cases. But in 1995 the caseload fell by 9%. These figures are supported by 11 other states that have raised the small claims limit. In most cases there is a small jump in cases the first year and in 9 of the 11 states the number of cases decreases in the second year. So the fear of an overwhelming increase in caseload is not borne out by experience. The two-tiered system in this bill will further limit the increase in caseload.

Small business owners are not able to recover the money owed them or must settle for a lower amount by having the small claims limit kept at an artificially low level of $5,000. With the two-tiered fee schedule the plaintiff, the courts and justices can all be served.

EFFECT OF INCREASED SMALL CLAIMS FEES
(by county)

COUNTY	2007 # OF CASES	% CASES UNCONTESTED	INCREASED CASE TOTAL	PRESENT FUNDS FOR CASE LOAD	MINIMUM NEW FUNDS	CONSERVATIVE NEW FUNDS
Adams	703	91.60%	773	$7,887.66	$16,393.96	$22,799.20
Ashland	416	89.42%	458	$4,667.52	$9,701.12	$13,491.42
Barron	1,826	85.60%	2,009	$20,487.72	$42,582.32	$59,219.55
Bayfield	252	85.71%	277	$2,827.44	$5,876.64	$8,172.69
Brown	8,809	91.43%	9,690	$98,836.98	$205,425.88	$285,687.32
Buffalo	286	93.01%	315	$3,208.92	$6,669.52	$9,275.35
Burnett	427	88.76%	470	$4,790.94	$9,957.64	$13,848.17
Calumet	699	87.12%	769	$7,842.78	$16,300.68	$22,669.48
Chippewa	1,662	88.57%	1,828	$18,647.64	$38,757.84	$53,900.82
Clark	646	91.18%	711	$7,248.12	$15,064.72	$20,950.62
Columbia	1,608	91.48%	1,769	$18,041.76	$37,498.56	$52,149.53
Crawford	584	96.06%	642	$6,552.48	$13,618.88	$18,939.88
Dane	15,114	88.42%	16,625	$169,579.08	$352,458.48	$490,166.67
Dodge	2,046	83.58%	2,251	$22,956.12	$47,712.72	$66,354.44
Door	650	82.92%	715	$7,293.00	$15,158.00	$21,080.35
Douglas	1,318	92.26%	1,450	$14,787.96	$30,735.76	$42,744.45
Dunn	983	85.86%	1,081	$11,029.26	$22,923.56	$31,879.97
Eau Claire	2,858	79.85%	3,144	$32,066.76	$66,648.56	$92,688.66
Florence	65	96.92%	72	$729.30	$1,515.80	$2,108.03
Fond du Lac	3,429	98.40%	3,772	$38,473.38	$79,964.28	$111,206.93
Forest	311	88.75%	342	$3,489.42	$7,252.52	$10,086.13
Grant	1,088	90.72%	1,197	$12,207.36	$25,372.16	$35,285.25
Green	785	91.08%	864	$8,807.70	$18,306.20	$25,458.57
Green Lake	435	88.74%	479	$4,880.70	$10,144.20	$14,107.62
Iowa	503	87.67%	553	$5,643.66	$11,729.96	$16,312.94
Iron	142	96.48%	156	$1,593.24	$3,311.44	$4,605.24
Jackson	857	92.07%	943	$9,615.54	$19,985.24	$27,793.62
Jefferson	2,465	88.28%	2,712	$27,657.30	$57,483.80	$79,943.15
Juneau	1,256	88.14%	1,382	$14,092.32	$29,289.92	$40,733.71

COUNTY	2007 # OF CASES	% CASES UNCONTESTED	INCREASED CASE TOTAL	PRESENT FUNDS FOR CASE LOAD	MINIMUM NEW FUNDS	CONSERVATIVE NEW. FUNDS
Kenosha	5,366	91.76%	5,903	$60,206.52	$125,135.12	$174,026.36
Kewaunee	391	88.75%	430	$4,387.02	$9,118.12	$12,680.64
La Crosse	3,236	93.33%	3,560	$36,307.92	$75,463.52	$104,947.69
Lafayette	326	89.88%	359	$3,657.72	$7,602.32	$10,572.60
Langlade	1,003	89.23%	1,103	$11,253.66	$23,389.96	$32,528.59
Lincoln	1,151	92.79%	1,266	$12,914.22	$26,841.32	$37,328.43
Manitowoc	2,044	91.54%	2,248	$22,933.68	$47,666.08	$66,289.58
Marathon	4,336	92.64%	4,770	$48,649.92	$101,115.52	$140,622.12
Marinette	1,274	91.21%	1,401	$14,294.28	$29,709.68	$41,317.48
Marquette	398	90.70%	438	$4,465.56	$9,281.36	$12,907.66
Menominee	76	88.16%	84	$852.72	$1,772.32	$2,464.78
Milwaukee	48,224	95.63%	53,046	$541,073.28	$1,124,583.68	$1,563,967.01
Monroe	1,570	94.20%	1,727	$17,615.40	$36,612.40	$50,917.14
Oconto	1,058	90.17%	1,164	$11,870.76	$24,672.56	$34,312.32
Oneida	1,410	98.30%	1,551	$15,820.20	$32,881.20	$45,728.13
Outagamie	5,735	77.12%	6,309	$64,346.70	$133,740.20	$185,993.51
Ozaukee	1,381	81.75%	1,519	$15,494.82	$32,204.92	$44,787.63
Pepin	131	87.02%	144	$1,469.82	$3,054.92	$4,248.50
Pierce	766	83.55%	843	$8,594.52	$17,863.12	$24,842.38
Polk	1,346	83.21%	1,481	$15,102.12	$31,388.72	$43,652.53
Price	326	95.40%	359	$3,657.72	$7,602.32	$10,572.60
Racine	7,175	93.81%	7,893	$80,503.50	$167,321.00	$232,694.58
Richland	500	93.20%	550	$5,610.00	$11,660.00	$16,215.65
Rock	5,470	89.78%	6,017	$61,373.40	$127,560.40	$177,399.21
Rusk	563	92.90%	619	$6,316.86	$13,129.16	$18,258.82
Sauk	2,523	82.24%	2,775	$28,308.06	$58,836.36	$81,824.17
Sawyer	490	83.88%	539	$5,497.80	$11,426.80	$15,891.34
Shawano	1,206	90.63%	1,327	$13,531.32	$28,123.92	$39,112.15
Sheboygan	4,509	97.72%	4,960	$50,590.98	$105,149.88	$146,232.73
St. Croix	2,195	93.26%	2,415	$24,627.90	$51,187.40	$71,186.70
Taylor	620	99.68%	682	$6,956.40	$14,458.40	$20,107.41
Trempealeau	708	83.90%	779	$7,943.76	$16,510.56	$22,961.36
Vernon	767	88.01%	844	$8,605.74	$17,886.44	$24,874.81

COUNTY	2007 # OF CASES	% CASES UNCONTESTED	INCREASED CASE TOTAL	PRESENT FUNDS FOR CASE LOAD	MINIMUM NEW FUNDS	CONSERVATIVE NEW. FUNDS
Vilas	663	98.79%	729	$7,438.86	$15,461.16	$21,501.95
Walworth	2,383	88.84%	2,621	$26,737.26	$55,571.56	$77,283.79
Washburn	486	86.01%	535	$5,452.92	$11,333.52	$15,761.61
Washington	2,584	88.97%	2,842	$28,992.48	$60,258.88	$83,802.48
Waukesha	7,315	87.93%	8,047	$82,074.30	$170,585.80	$237,234.96
Waupaca	1,587	88.28%	1,746	$17,806.14	$37,008.84	$51,468.47
Waushara	670	90.00%	737	$7,517.40	$15,624.40	$21,728.97
Winnebago	5,772	86.56%	6,349	$64,761.84	$134,603.04	$187,193.46
Wood	2,354	89.98%	2,589	$26,411.88	$54,895.28	$76,343.28
TOTALS	**184,311**	**89.87%**	**202,742**	**$2,067,969.42**	**$4,298,132.52**	**$5,977,445.33**

NOTES:

1) The number of small claims cases and the uncontested percentage was gotten from the Wisconsin Court website. The link to the report is: http://www.wicourts.gov/about/pubs/circuit/docs/caseloadcounty07.pdf

2) The increased case total assumes a 10% increase by increasing the limit. The last time Wisconsin increased the limit it was about 10% The 10% figure is also mirrored in other states that have increased the small claims limit.

3) The minimum new funds figures are assuming all cases will be infrequent users, thus an $11 increase over the present fee.

4) The conservative new funds figures assume 24.7% of cases will be infrequent users & 75.3% will be frequent users.

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TO: Assembly Committee on Judiciary and Ethics

FROM: Bob Andersen
Mark Silverman

RE: Assembly Bill 524, relating to the jurisdictional amount and court fees in small claims actions

DATE: December 1, 2009

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Housing Law and Consumer Law are among the principal priorities of the organization.

1. The Dilemma in Small Claims Court

As you know, legislation has been introduced on several occasions to increase the jurisdictional amount in Small Claims Court. The concern has often been expressed that individuals and small businesses are compelled to hire attorneys and to proceed through the more formal requirements of large claims actions for claims over $5,000. The problem is that the estimate – from both attorneys in our organization and from attorneys outside of our organization – is that 80% of the claims in Small Claims Court are debt collections cases. These include the tens of thousands of cases brought each year by consumer credit transaction plaintiffs, hospitals and large scale landlords. The volume of those cases is so high that increasing the jurisdictional amount will devastate the counties by inundating them with cases. It is also a problem for consumers, because, as explained below, the crush of cases in Small Claims Court is so high, that it becomes nearly impossible for an individual defendant to defend himself or herself in a claim. The informal procedures in Small Claims Court offer no review of these cases to ensure that serious mistakes are not made, exaggerated claims are not granted, and valid defenses go unrecognized. The simple expansion of Small Claims Court only makes a bad system worse.

We should say immediately that this is not the fault of the counties. Given the huge volume of

cases they are faced with in Small Claims Court, they have no alternative. The counties deserve credit for improving their procedures. But, the huge number of cases filed in Small Claims Court overwhelms even the best of procedural improvements in the systems.

In Milwaukee County there are some 40,000 cases filed per year. More than 3/4 are non eviction cases and the rest are evictions.

2. AB 524 Attempts to Address this Dilemma by Adopting an Approach That Is Used in at Least Two States – California and Minnesota.

The bill maintains the $5,000 jurisdictional amount for the 80% of cases that are debt collections brought by entities that file more than 20 claims per year in a particular county. This means that for the great many cases filed in Small Claims Court nothing changes in the jurisdictional amount. However, for those who file less than 20 claims per year in the county, the jurisdictional amount will be increased to $10,000. This way, the individuals and small businesses are allowed to go to Small Claims Court with the benefit of more informal procedures and without having to hire an attorney for claims over $5,000.

Minnesota has a similar system. Claims for ***consumer credit transactions*** are limited to claims ***under $4,000 for Small Claims Court.*** For all other claims, the ceiling is ***$7500. California*** has an even more limited system. ***Corporations and other entities (government entities)*** are limited to claims under ***$5,000*** in Small Claims Court in California. For ***individuals***, the limit is ***$7500. In addition,*** in California no individual, corporation or other entity (except a governmental entity) may bring more than ***two*** claims for more than***$2500*** per year in Small Claims Court. Also in California, the ***$5,000 limit*** applies to a number of other kinds of actions – ***including fee arbitration awards, certain unsecured property tax claims, and actions against guarantors.***

3. Filing Fees

AB 524 increases the filing fees for plaintiffs as follows: (1) an increase from $22 to $44 for frequent users of Small Claims Court who file more than 20 claims per year, and (2) an increase from $22 to $33 for infrequent users who file less than 20 claims per year. The increase in fees essentially recognizes who it is that ***uses*** the system most and whose cases place the greatest burden on county resources.

California has a similar system. The fees in California for those who filed ***12 or fewer claims*** are as follows: (1) 0 to $1500 – $30; (2) $1500.01 to $5000 – $50; $5000.01 to $7500 – $75. For those who filed ***more than 12 claims*** – $100.

The revenue from the increase in fees under AB 524 goes entirely to the counties. This way, the counties have far greater revenues to handle the increase in caseload for individuals who file less than 20 claims per year and who are therefore subject to the $10,000 ceiling. The increase in revenue, especially from the frequent users of the system, will enable the counties to put more

resources into the Small Claims Court where the system is inundated with cases: the 80% of cases brought by debt collection companies. The increase in revenue should enable the counties to hire more clerks, court commissioners and perhaps mediators, as explained below. It should also free up more time for cases to be heard, so that individuals who show up on the return date are given ***their day in court*** to explain why they do not owe the money or why they do not owe as much as is claimed.

4. The Problems Brought on by the Huge Overload of Cases in Small Claims Court Now.

The problem is at its greatest in Milwaukee County, although other counties could benefit from increased resources in Small Claims Court to provide more access for defendants and to provide alternatives for helping defendants, like mediation.

In Milwaukee County huge numbers of cases are called at a time. Three fourths or more are non eviction and 1/4 are eviction. For non eviction cases, hundreds of cases are called for a session begins at 8:30 a.m. and it may be a few hours before a particular defendant's name is called for someone who has shown up on the return date. Three tables are set up for legal counsel who are representing the debt collection agencies. In many cases, when a defendant's case is called, the defendant has to act very quickly in a loud voice to prevent a judgment from being quickly entered. Even if the defendant gets the attention of the clerk, the clerk will often ask the defendant – Do you owe the money? Defendants often start to explain, where there is no time for an explanation. The defendant may be directed to proceed out of the court room to discuss the case with the plaintiff's attorney. Even though the defendant thinks that something has been worked out, the defendant's is shocked to find out that a judgement has been entered. Especially, when the defendant shows up at a subsequent garnishment action. In some cases, the defendant may be referred to a court commissioner. But, the court commissioner's role is not to be an advocate. The court commissioner will probably ask the same question about whether the defendant owes the money. In some cases, the case may be set aside to another day.

The problem is that the crush of cases just does not allow for any real attention to be paid to a person's case for the vast majority of cases. Again this is not the fault of the counties or of the judges. It is simply the result of having so many cases filed. The situation is even worse for a defendant who could not make it on the return date. A default judgement will be entered, even if the person was sick and unable to attend. It would be far better if the resources existed so that defendants could be given some opportunity to ask for a different date in emergency situations.

For eviction cases, the process is similar. The cases are called in the afternoon. The court tried to separate the cases by calling them in blocks alphabetically by defendants' last names, but there is no proof that this has made anything better. Defendants are given an opportunity to approach the clerks, but the same question is going to be asked – Do you owe the rent? For eviction cases, the situation is even more urgent. The system is set up so that the property can be returned to the landlords so that they can re-rent the premises as soon as possible, as it should be. Defendants

are more likely to be referred to a court commissioner. But, again the same problem exists. The court commissioner is not really in a position to help out the tenant. The tenant may have a valid defense, but may not be able to understand that or how to raise the defense.

Again, the system could be improved by giving people more time to address their individual cases, more clerks and court commissioners, perhaps mediators to help tenants, and more judges or the rotation of judges, so that judges are not overwhelmed by cases. In Milwaukee County, there are some mediators provided by the law school. They help persons in some cases.

5. Equal Protection Clause

The question is whether setting up a two tier system like this, with different jurisdictional ceilings and different filing fees, based on the number of claims filed, violates the Equal Protection Clause of the 14th Amendment to the U.S. Constitution or Article I, Section 1 of the Wisconsin Constitution.

First, under state law, there are already different classifications that are treated differently for purposes of Small Claims Court, under s. 799.01 – eviction actions, return of earnest money, forfeitures, replevins, and arbitration are in Small Claims Court, regardless of the amount of money involved. Secondly, there is already a differential treatment under state law by requiring that claims above $5,000 proceed to large claims court, while those under $5,000 may benefit from more the informal Small Claims procedures. ***Thirdly*** both ***California*** and ***Minnesota*** have operated ***two tier systems*** like the one proposed by AB 524 for ***years***, without being struck down as violating the Equal Protection Clause.

The U.S. Supreme Court, whose decisions the Wisconsin Supreme Court decisions mirror, follows three analyses in determining whether a classification violates the Equal protection Clause: (1) whether there is a rational basis for the difference in treatment; (2) whether there is a suspect classification or a burden on a fundamental right that requires a strict scrutiny and demonstration of a compelling state interest, which is therefore more likely to be invalidated; and (3) a middle-tier scrutiny, relating to quasi suspect classifications that require that the classification serves an important state interest and is substantially related to serving the interest. Suspect classifications are race, national origin, religion, and alienage (unless the classification falls within a recognized "political community" exception, in which case only the rational basis test applies). Middle tier suspect classifications are gender and illegitimacy.

Classifications affecting ***fundamental rights*** include denial or dilution of the right to vote, interstate migration, and ***access to courts***.

Laws that are struck own under the Equal Protection Clause are mostly those that involve a suspect classification or fundamental right and which therefore impose a higher burden on the state to justify. The only issue involved here that could be said to raise such a standard is the issue of ***access to courts***.

The first question, then, is whether this deprives parties of access to courts and therefore must demonstrate a compelling state interest. The ***two tier system*** does ***not deprive anybody of access to courts***. It has different processes and different filing fees that apply, but it does not deprive anybody of the fundamental right like the right of access to the courts. As indicated above, the kinds of differential treatment it affords regarding processes and filing fees are already true of several other classifications under state law. It is also true of the simplest of differentiations that has existed for many years, between small claims and large claims – claims under $5,000 are in Small Claims Court and claims over $5,000 are in large claims court.

But while the kinds of procedures litigants have access to differ depending on ***the amount in controversy*** or depending on ***the kind of case it is – e.g., eviction, return of earnest money, forfeitures, replevins, and arbitration – the existing classifications under current law do not deprive anyone of access to the courts***. So it is that the same is true for the proposed legislation, differentiating plaintiffs who bring more than 20 claims per year are subject to a $5,000 limit from plaintiffs who bring fewer than 20 claims per year and are subject to a $10,000 limit. No one is deprived of access to the courts. ***If anything, it could be said that the legislation expands access to the courts***. It has no effect on the current $5,000 limit for Small Claims. But it expands access to Small Claims by granting it to persons whose actions involve between $5,000 and $10,000 if they file fewer than 20 claims per year.

Consequently, the only test that applies under the Equal Protection Clause is whether there is a rational basis for the distinction in treatment. Legislation is rarely struck down on grounds that there is no rational basis for the distinction being made. AB 524 places a lower ceiling on claims by plaintiffs that exceed 20 per year and imposes a higher filing fee on these plaintiffs. The differential treatment recognizes that these are the entities who ***use*** the system ***much more*** and who therefore should be treated differently in how much of the court's resources they use and how much they pay for those resources. Therefore, there is a rational basis for the distinction in treatment.

6. Enforcement

The increased revenue for the counties provided by the bill should easily pay for the data system that would be needed to keep track of how many claims are filed per year. But, in addition, the bill provides another safeguard – which is to provide that a defendant is entitled to have the case dismissed with prejudice and to receive $250 in damages, together with reasonable attorney fees, where a plaintiff has falsely sworn on the complaint that the plaintiff has commenced fewer than 20 claims per year.

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MEMORANDUM

TO: Honorable Members of the Assembly Committee on Judiciary and Ethics

FROM: Sarah Diedrick-Kasdorf, Senior Legislative Associate

DATE: December 1, 2009

SUBJECT: Testimony for Information Only on Assembly Bill 524

Assembly Bill 524 increases the jurisdictional amount in small claims court to $10,000 if the person bringing the action has commenced 20 or fewer actions in small claims for a money judgment, attachment, garnishment, or to enforce a lien, within the previous 365 days. Also under the bill, if the person bringing the action has commenced 20 or fewer actions in small claims for a money judgment, attachment, or to enforce a lien, within the previous 365 days, the person must pay a filing fee of $33. If the person bringing the action has commenced 21 or more actions in small claims for a money judgment, attachment, or to enforce a lien, within the previous 365 days, the person must pay a filing fee of $44.

The Wisconsin Counties Association (WCA) provides the following testimony for information only on Assembly Bill 524. At this time, we do not have an official position on this legislation.

- At a time when counties are concerned about decreasing revenues from the state and federal governments, as well as decreasing revenue from sales tax collections and interest income, any legislation that provides increased revenue to counties is a step in the right direction. However, there is concern that the increased revenue contained in the bill will be disproportionately allocated to areas of the state with high concentrations of utility companies, credit card companies, health care facilities, etc.
- Counties are concerned about the potential for an increased workload in the clerks of court office due to the new bifurcated system – confusion among users, difficulty administering the new system, etc.
- Some counties have expressed concern regarding the inequity of the bifurcated system, especially when a (low income) defendant is assessed court costs.

Our Judicial and Public Safety Steering Committee will be meeting this week to review this legislation.

Thank you for considering our comments. We will contact committee members when our board of directors takes an official position.

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE GARY HEBL

FROM: Don Dyke, Chief of Legal Services

RE: 2009 Assembly Bill 524, Relating to the Jurisdictional Amount and Court Fees in Certain Small Claims Actions, and the Governor's Partial Veto Authority Under Article V, Section 10, Wisconsin Constitution

DATE: November 16, 2009

You request brief comment regarding whether the above-captioned bill is an appropriation bill for purposes of the exercise of the Governor's partial veto authority under art. V, s. 10, Wis. Const. As briefly discussed below, it does not appear that Assembly Bill 524 is an appropriation bill for this purpose.

ASSEMBLY BILL 524

Assembly Bill 524 increases the general jurisdictional amount in money judgment small claims actions* from $5,000 to $10,000 if the claimant has commenced 20 or fewer such actions within the previous 365 days. If the claimant has commenced more than 20 such actions within the previous 365 days, the bill, as does current law, limits the amount claimed in a money judgment small claims action to not more than $5,000.

The bill also increases the filing fee for small claims actions for money judgment. If the claimant has commenced 20 or fewer actions within the previous 365 days, the filing fee is increased from $22 to $33. If the claimant has commenced 21 or more such actions within the previous 365 days, the filing fee is $44. The amount of the filing fee that goes to the state general fund remains at $11.80. The remainder is retained by the county.

Finally, the bill provides that if a person commencing a small claims action from a money judgment incorrectly indicates the number of previous small claims actions commenced within the

* Reference to "money judgment" actions is a shorthand reference to the actions covered by the bill: money judgment, attachment and garnishment, and personal property lien enforcement.

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previous 365 days, as required under the bill, then a party proving the numbers incorrect is awarded damages in the amount of $250 and reasonable attorney fees and the action is dismissed by the court with prejudice.

ARTICLE V, SECTION 10, WISCONSIN CONSTITUTION

Article V, Section 10 (1) (b), Wisconsin Constitution provides in part: "Appropriation bills may be approved in whole or in part by the governor, and the part approved shall become law."

DISCUSSION

Generally speaking, an appropriation is an authorization to expend public moneys. Under art. VIII, s. 2, Wis. Const., "no money shall be paid out of the treasury except in pursuance of an appropriation by law." Under s. 20.003 (2), Stats., all appropriations made by the Legislature are listed in ch. 20 of the statutes.

The Wisconsin Supreme Court has adopted the general rule that the Governor may exercise partial veto authority in a bill which contains an appropriation within its four corners. *State exrel. Finnegan v. Dammann,* 220 Wis. 143, 147-148, 265 N.W.2d 622 (1936). A more recent case summarizes the holding in *Finnegan*, which gives more guidance as to what is not an appropriation bill: "In sum, the fact that a provision generates revenue and affects an appropriation because the amount appropriated is determined by the amount of revenue generated does not convert the bill into an appropriation bill nor the provision into an appropriation." *Risser v. Klauser*, 207 Wis. 2d 177, 196, 558 N.W.2d 108 (1997).

Assembly Bill 524 does not contain an appropriation within its four corners. It does not create, repeal, or amend a ch. 20 appropriation. While the Legislative Fiscal Bureau has indicated that the bill may result in a shift of cases from large claims to small claims and consequently, due to lesser fees in small claims actions, decrease revenue to the state's general fund and the circuit courts automation programs (but increase revenue to the counties), the effect on revenues does not appear to make the bill an appropriation bill for purposes of the exercise of the partial veto authority, based on current interpretation of the pertinent constitutional provision.

If you have any questions or need additional information, please contact me directly at the Legislative Council Staff offices.

DD:jb:wu

WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: REPRESENTATIVE GARY HEBL

FROM: Don Dyke, Chief of Legal Services

RE: LRB-2999/2, Relating to the Jurisdictional Amount and Court Fees in Certain Small Claims Actions

DATE: October 14, 2009

You request brief comment regarding equal protection issues that might be raised in connection with the above-captioned draft.

The Draft

The draft increases the general jurisdictional amount in money judgment small claims actions* from $5,000 to $10,000 if the claimant has commenced 20 or fewer such actions within the previous 365 days. If the claimant has commenced more than 20 such actions within the previous 365 days, the draft, as current law, limits the amount claimed in a money judgment small claims action to not more than $5,000. The draft also increases the filing fee for small claims actions for money judgment. If the claimant has commenced 20 or fewer actions within the previous 365 days, the filing fee is increased from $22 to $33. If the claimant has commenced 21 or more such actions within the previous 365 days, the filing fee is $44. The amount of the filing fee that goes to the state general fund remains at $11.80. The remainder is retained by the county.

Finally, the draft provides that if a person commencing a small claims action for money judgment incorrectly indicates the number of previous small claims actions commenced within the previous 365 days, as required under the draft, then a party proving the number is incorrect is awarded damages in the amount of $250 and reasonable attorney fees and the action is dismissed by the court with prejudice.

* The draft applies to actions or proceedings for money judgment, attachment and garnishment, and enforcement of a lien on personal property. In this memorandum, these actions or proceedings are referred to collectively as actions for money judgment.

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Equal Protection

Both the Wisconsin Constitution and the U.S. Constitution contain an equal protection clause. Article I, Section 1, Wisconsin Constitution, and 14th Amendment U.S. Constitution. Courts generally apply two different standards of review when determining whether a law violates the constitutional guarantee of equal protection of the laws. A law affecting a fundamental right, such as access to the courts, or law classifying people on the basis of a suspect classification, such as race, is subject to a heightened, or strict, scrutiny. In most other cases, courts apply the rational basis test to determine whether a law violates the equal protection clause.

Under the rational basis test, a law will be found not to violate the equal protection clause if the classification is rationally related to a legitimate state interest. *Frank v. Wollin Silo Equipment, Inc.*, 148 Wis. 2d 59 (1989). Under the strict scrutiny test, a law will be upheld in an equal protection challenge if the law promotes a compelling governmental interest and is narrowly tailored to achieve that interest. *State v. C & S Management, Inc.*, 198 Wis. 2d 844 (Ct. App. 1995), review denied 201 Wis. 2d 436.

Classifications Under the Draft

The draft creates two classes of claimants: (1) claimants who have commenced 20 or fewer small claims money judgment actions within the previous 365 days, who are subject to a $10,000 jurisdictional limit and who must pay a $33 filing fee; and (2) claimants who have commenced 21 or more small claims money judgment actions within the previous 365 days, who are subject to a $5,000 jurisdictional limit and who must pay a filing fee of $44. Similarly, two classes of defendants in money judgment actions are created under the draft: (1) those who are being sued in small claims court for more than $5,000 but less than $10,000; and (2) defendants who are being sued in regular circuit court for not more than $5,000 but not exceeding $10,000.

Comment

While the draft affects access to the courts, it does not deny access but rather increases access to small claims court. Presumably, the draft ultimately limits expanded access to small claims court by frequent users in order to ensure access by less frequent users and maintain the efficient administration and resolution of small claims cases by avoiding overwhelming the system in the face of scarce resources. Similarly, the draft's increases in filing fees may be supported by increased court system costs generally since the current fees were established; anticipated expanded use of small claims courts; and the extra strain put on small claims court administration by frequent users.

It is noted that the small claims law already creates classifications of claimants and defendants based on type of claim and amount claimed. The draft can be characterized as further refinement of these existing classifications, allowing expanded use of small claims court but recognizing that limitations on that expanded use are necessary in light of scarce resources and that frequent users should contribute more to the county expense of small claims court.

These, and presumably other, arguments may be posited as supporting the classification under the draft. Because access to courts is increased by the draft, it is arguable that the strict scrutiny standard would not apply in an equal protection challenge. However, the policy supporting the classifications established by the draft arguably meets both the rational basis and strict scrutiny tests.

This has been an initial, general, and brief discussion of equal protection considerations under the draft. Ultimately, if challenged, it will be up to a court to determine whether the classifications in the draft deny equal protections of the laws. However, arguments can be made supporting the classifications of the draft. Further, it is my understanding that the draft is based on similar provisions found in other states; while not determinative, that may be indication that such classifications might be upheld.

If you have any questions or need additional information, please contact me directly at the Legislative Council staff offices.

DD:ty

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November 24, 2009

TO: Representative Gary Hebl
Room 120 North, State Capitol

FROM: Chris Carmichael, Fiscal Analyst

SUBJECT: Assembly Bill 524: Small Claims Jurisdictional Amount - UPDATED

At your request, this memorandum updates the estimate of the potential fiscal effect of Assembly Bill 524 (LRB 2999/2), which would modify the jurisdictional amounts for small claims actions. The original estimate (discussed in our September 23, 2009, memorandum to you) was based on a manual review of one-month's case filings in Dane County. The updated memorandum is based on a six-month review of case filings in Milwaukee and Dane Counties.

CURRENT LAW

Under current law, the jurisdictional limit in small claims cases is $5,000 or less. Further, since the maximum limit for claims against the state payable by the Claims Board is established by the small claims' maximum, the Claims Board may approve the payment of claims up to $5,000 without legislative approval.

The applicable filing fees for small claims actions total $94.50 and include: (a) $22 filing fee; (b) $51 court support services surcharge; and (c) $21.50 justice information fee. For large claims actions ($5,001 or more), filing fees total $265.50 and include: (a) $75 filing fee; (b) $169 court support services surcharge; and (c) $21.50 justice information fee. The resulting difference in fee revenue between a small claims action and a large claims action is $171.

ASSEMBLY BILL 524 (LRB 2999/2)

Assembly Bill 524 would modify the jurisdictional limit in small claims cases as follows:

a. $10,000 or less, if the plaintiff has commenced 20 or fewer actions within the previous year; or

b. $5,000 or less, if the plaintiff has commenced 21 or more actions within the previous

year.

The maximum limit for claims against the state payable by the Claims Board would remain at $5,000. Further, the bill would modify the $22 filing fee for the above small claims actions to $33 for actions of $10,000 or less (a. above), and to $44 for actions of $5,000 or less (b. above). As a result, the applicable fees filing a small claims money action would increase from $94.50, under current law, to either $105.50 or $116.50, depending on the case. The resulting difference in fee revenue between a small claims money action and a large claims action would be either $149 or $160, depending on the case. Revenue from the increased fee would be retained by the counties.

According to the Director of State Courts Office, of the 178,461 money claims filed in 2008, 143,308 were for small claims actions ($5,000 or less), with the remaining 35,153 for large claims actions ($5,001 or more). Due to statutory restrictions that prohibit the amount of money sought to be specified [s. 802.02(1m)], determining the actual number of cases seeking dollar amounts between $5,001 and $10,000 is not possible. While it is unknown how many money claims are for $5,001 to $10,000, based on the number of docketed judgments (a formal court action to recover monies determined in a previous court action) recorded in 2008, it is assumed that approximately 11% of the 35,153 large claim money actions were for $5,001 to $10,000 (3,867). The remaining cases are assumed to be for amounts greater than $10,000.

From January 1, 2009 through June 30, 2009, a total of 18,834 small money claims were filed in Milwaukee and Dane Counties, with a total of 14,187 involving plaintiffs filing 10 or more actions in that time period. Based on this and the above data, it is assumed that 75.3% of cases (including large claim cases shifted to small claims) would involve plaintiffs who file more than 20 actions a year. The estimated annual fiscal impact of AB 524 would be a net increase in revenue of $2,618,400, including: (a) -$141,400 to the state's general fund; (b) -$3,100 to the circuit courts automation programs; and (c) $2,762,900 to the counties. Because the bill increases the filing fee for small claims actions, counties would see an increase in revenue, although the state would still see a decrease as a result of the large claims actions shifted to small claims.

In reviewing the fiscal effect, it should be noted that because of the bill's two-tiered small claims jurisdictional limit ($10,000 if 20 or fewer claims are filed and $5,000 if 21 or more claims are filed) some proportion of large claims that otherwise would be shifted to small claims jurisdiction may remain under large claims jurisdiction if 21 or more claims are filed within one year. As a result, actual experience may vary from the fiscal impact identified above. The number of claims meeting both of the criteria of being between $5,001 and $10,000, and being filed by an individual filing more than 21 claims in one year, however, is unknown. To the extent that more claims are shifted to small claims jurisdiction, the revenue loss to the state would be increased. If for example, all of the variables above remain unchanged except that 50% of claims were to remain as large claims and not be shifted to small claims, the annual fiscal effect of AB 524 would be a net increase in revenue of $2,470,100 including: (a) -$286,100 to the state's general fund; (b) -$6,200 to the circuit court automation programs; and (c) $2,762,400 to the counties.

I hope this information is of assistance.

CC/sas